Ethical Analysis of the Possible Introduction of Chemical Castration as a Criminal Sanction

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Abstract: This article lists the ethical considerations to be taken into account when examining the possible introduction of chemical castration as a criminal sanction, by looking at the international conventions and by comparing the pro and con arguments in several foreign journals and studies. However, it has yet to be the purpose of this paper to answer the question of what the author thinks about the possibility of an introduction based on examining the ethical aspects. The study shows that there should also be a thorough and ethical evaluation process for convictions of sex offenders. The human rights of offenders should not automatically carry less weight than those of other members of the community, precisely in order to preserve community values. When examining human rights, it should be remembered that it is not only the person on the perpetrator’s side who has fundamental rights, but also the person on the victim’s side. It is therefore important, in my opinion, to examine the effects on the victim side, even if not as exhaustively as on the perpetrator side, because one of the scales on which the fundamental rights are weighed is the rights of those persons.

Keywords: Castration; Criminal Sanction; Ethical Analysis;

1. Introduction

The aim of the preventive model of domestic law enforcement is to promote the greatest utility of enforcement, sentencing and investigative techniques that provide the greatest security for society. It ostensibly builds on the positive obligations of the state to protect citizens from becoming victims of future dangerous acts committed by other members of the community. In a society obsessed with risk identification and avoidance, states are encouraged to exploit the fear of the masses and prioritise harm reduction. Preventive state criminal law evolved from the concept of a risk society (Mark D. Kielsgard, 2019). The consequences of 'preventive logic' are most strongly manifested in the exclusion of future offenders, especially dangerous sexual and violent offenders. The difference between prevention and precaution can be calculated on a scale of probability of risk. Preventive logic should be seen as referring to a significant likelihood of future victimisation, whereas precautionary logic is concerned with the mere possibility of future victimisation (Mark D. Kielsgard, 2019).

In this context, uncertainty can be described in two ways. Firstly, from the social psychological perspective of social uncertainty and secondly, from the usual judicial uncertainty in decision making, which lies in the prediction of the future dangerousness of specific offenders or suspects. Although the precautionary principle has its origins in environmental science, its application has also been adopted in criminology. As the risk society increasingly relies on scientific data, so does the government’s increasing reliance on actuarial data, to the
extent that it represents a 'new punishment' based not on what the offender has done, but on what he can do.

The first set of actuarial information is made up of predictive models, and the second set is crime-specific data. It is important to stress, however, that there are no guidelines as to which type of data is used or preferred, this is left to the subjective judgement of individual judges. Secondly, the diagnosis of mental health conditions and the making of predictions of future dangerousness arising from them is also a matter of differing medical expert opinion, not an exact science and dependent on the knowledge, skill, competence and subjective judgement of individual mental health professionals arising from their humanity. The danger of relying on these opinions is that they create an appearance of reliability which does not correspond to the legitimacy attached to them, since they are used for the dubious enterprise of predicting future dangerousness. Chemical castration is an important trend in this risk management (Mark D. Kielsgard, 2019).

The management of patients with paraphilia, regardless of the treatment method used, has always been a minefield of clinical and ethical dilemmas. Even before their actual, practical application, ethical objections were raised to the treatment of sex offenders with psychodynamic psychotherapy, aversion therapy, surgical castration and anandrogenic drugs. The major ethical issues associated with sex offenders, including paraphilic offenders, may reflect the need for public safety balanced with the public and even the profession's orientation toward punishment rather than treatment, even when treatment is appropriate and effective (Florence THIBUTA, 2010).

The positive obligations of the state are linked to the right to security. These obligations can be described as the state's duty to ensure the security of citizens' human rights against third, non-state violators. The rise of the risk averse community, manifested in the positive obligations of the state, is conceptually based on the human right to security and has led to a shift from rehabilitation to risk management".

In more difficult cases of physical or chemical castration, this analysis requires a more nuanced focus. As the dialogue on risk becomes more prevalent, there is a growing acceptance of greater renunciation of fundamental human rights by the majority of the population, especially when the renunciation of rights is targeted at a smaller proportion of the population. Functionally, this leads to a utilitarian tactic that ensures the greatest security and access to human rights for the greatest number, at the expense of the basic freedoms of the few. For example, pharmacological procedures and interventions such as chemical castration are, in some countries, compulsory or voluntary given to the perpetrator to reduce their sexual urges. This sends the message that the state is not interested in improving the offender's ability to reform through the use of rational skills and willpower, assuming that he or she is capable of achieving change on his or her own because there is no physical or psychological influence preventing him or her. The narrative is rather that society cannot and will not tolerate risk and therefore biologically eliminates freedoms in the interest of safety. This, some argue, results in the objectification of the affected members of society (Mark D. Kielsgard, 2019).

In this respect, the measures taken against perpetrators of sexual and violent crime reflect a larger and more general shift in criminal policy. Rather than viewing the offender as someone who can be changed by the system, the offender is seen as an 'other'. The 'others' are seen as persons who are distinct from the traditional polis and who pose a significant threat
and risk, while citizens are seen as 'at risk'. This perspective is 'dehumanising' and contrary to a rights-based approach, as it is contrary to human dignity.

An important question is whether this reasoning can be applied in the future to precautionary initiatives for other crimes (e.g. medical custody for theft offences, as offenders may be diagnosed with kleptomania, or for non-sexual assault offences, as offenders may suffer from aggressive disorder, etc.), and whether neurological intervention will not eventually become too widespread for persons convicted of any sexual offence, as is currently the case for the less intrusive drug counselling and diversion services provided to drug offenders. The slippery slope of precautionary sentencing potentially consists of an endpoint that approximates Orwellian reality (Mark D. Kielsgard, 2019).

As I mentioned once before, some scientific views hold that, from an ethical point of view, a patient can only be subjected to hormonal treatment if all of the following conditions are met (Florence THIBUTA, 2010):

a. The person has a paraphilic disorder, diagnosed by a psychiatrist after a thorough psychiatric examination.

b. Hormonal treatment addresses specific clinical symptoms and behaviours and is tailored to the person's health status.

c. The person's condition poses a significant risk to his or her health or to the physical or moral safety of others.

d. There are no less intrusive treatments available to provide care.

e. The psychiatrist in charge of the patient undertakes to inform the patient and obtain his/her consent, and takes responsibility for the indication and follow-up of the treatment, including somatic aspects, with the assistance of an endocrinologist if necessary.

f. Hormonal treatment is part of a written treatment plan, which should be reviewed at appropriate intervals and modified if necessary.

If a person who has committed a sexual offence is subject to compulsory treatment, the decision to subject the person to hormonal treatment should be taken by a psychiatrist with the appropriate expertise and experience, after examination and informed consent of the person concerned. However, consent is sometimes given in circumstances (e.g. prison or detention in a secure hospital) where the person is being held under certain coercive conditions. Although treatment may facilitate recovery and release or discharge, this is not necessarily the case. In cases of doubt about the validity of a patient's consent, subsequent withdrawal of consent or non-compliance with treatment, the decision to place a sex offender under compulsory treatment should be taken by a court or other competent body.

While there are positive aspects to compulsory treatment, there are also risks, particularly when the treatment is in the form of tablets and the offender is self-medicating, and even when the medication is administered by health professionals; Unfortunately, it is still possible for the offender to obtain testosterone on the black market to counteract the effects of the drugs taken or administered, so that even if the medication is administered under medical supervision, there is no guarantee that the appropriate treatment can be maintained, since there is a risk that the offender will prevent it from having an effect. A further ethical issue is the possibility of substituting in prison drugs that may cause serious side effects (HARRISON, 2008) (Mark D. Kielsgard, 2019).
Taking human dignity into account adds a new nuance to the problem. Article 1 of the Charter of Fundamental Rights of the European Union (CFREU) states that "Human dignity is inviolable. It must be respected and protected". Article 3 further states that "Everyone has the right to respect for his or her physical and moral integrity". These rights must be respected in particular in the fields of medicine and biology:

a. with the free and informed consent of the person concerned in accordance with the procedures laid down by law
b. the prohibition of eugenic practices, in particular those aimed at the selection of persons.

UNESCO's Universal Declaration on Bioethics and Human Rights, adopted in 1997, states in Article 3 that "the interests and well-being of the human being shall take precedence over the exclusive interests of society or science". Article 5 goes on to say that "In the field of medicine, certain interventions may be lifted only after the free consent and information of the person concerned". The person concerned must be informed in advance of the purpose and nature of the intervention and of the consequences and risks involved. The person concerned is free to withdraw his or her consent at any time (Ratkoceri, 2020).

2. The Protection of Human Rights

While critics of chemical castration in the United States generally argue that it violates the First Amendment right to mental autonomy, the Eighth Amendment prohibition of cruel and unusual punishment, and the Fourteenth Amendment right to privacy and individual liberty, the dilemma arises in Europe, whether chemical castration is in line with the provisions of relevant international conventions that specifically protect human rights and fundamental freedoms, such as the European Convention on Human Rights or the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and other international instruments that establish the protection of certain undeniable human rights, even for the perpetrator (Ratkoceri, 2020). One of the most important questions for this thesis is to examine from a European perspective whether or not the use of chemical castration is compatible with the rights protected by these conventions.

In this context, the primary question to be answered is whether or not the use of chemical castration against sex offenders constitutes a violation of fundamental freedoms and human rights.
To answer this question, Ass. Prof. Dr. sc. Vedije Ratkoceri, there are three key questions that need to be addressed that can lead to the final answer:
1. Does chemical castration constitute torture, inhuman and degrading treatment?
2. Does chemical castration deny the right to privacy and the right to start a family?
3. Does chemical castration deny the right to dignity and integrity?
In what follows, I will try to answer these questions by examining each of the fundamental freedoms and human rights relevant to this dissertation separately.
A. The Right to Human Dignity

Human dignity is not only one of the fundamental rights, but also the starting point for the others. The right to human dignity takes two forms: in a broader sense, as a relative right protecting the development of the personality (a general right to personality), and in a narrower sense, as an absolute right protecting the fundamental conditions of human existence, which underpins the system of fundamental rights. In defining the concept and content of the right to human dignity, both international conventions and constitutions use negative generalisation, i.e. they define the prohibitions based on examples of violations of human dignity in various ways (ZAKARIÁS, 2018). The right to human dignity implies that there is a core of autonomy, of self-determination, of the individual, outside the control of all others, whereby, in the classical formulation, man remains a subject and cannot become a tool or an object. It is this conception of the right to dignity that distinguishes man from legal persons, which are entirely subject to regulation, with no intangible essence (Decision 64/1991 (XII. 17.) AB).

In her study, Kinga Zakariás describes how opinions are divided on the question of what kind of behaviour constitutes treating people as objects. The prohibition of torture, inhuman and degrading treatment and punishment as a typical violation of human dignity in national constitutions and international legal instruments does not in itself provide an answer to the question of what we should understand by these treatments. A negative approach to the right to human dignity thus leaves room for interpretation (ZAKARIÁS, 2018). Zakariás notes that the ECtHR (European Court of Human Rights) first interpreted the prohibited conduct in Article 3 of the Convention in Ireland v. the United Kingdom and elaborated the conditions for its implementation, but decides on a case-by-case basis whether the challenged treatment constitutes prohibited conduct and precisely which prohibited conduct. The negative approach to human dignity in the practice of the Constitutional Court also leads to the fact that the violation of human dignity is manifested in concrete cases, through examples. Part of the literature describes the formula of objectification as an empty formula, given that the formula is only capable of delimiting clear limitations. Others, however, argue that it has made a significant contribution to the legal enforceability of human dignity.

Zakariás points out that, despite the negative approach to human dignity and the case-by-case approach that it entails in jurisprudence, jurisprudence has defined the substantive elements of the right to human dignity, which can be defined by legal means. The literature defines the content of the right to human dignity by identifying the spheres in which human dignity is particularly manifested as the essential content of fundamental rights, through its function of underpinning the system of fundamental rights. It is agreed that the right to human dignity ensures the physical and mental integrity of the individual, the identity of the spiritual and moral personality, the equality of human beings and the minimum necessary for subsistence. The content of the right to human dignity is therefore made up of sub-concepts which are developed in international human rights law and in the practice of constitutional courts (ZAKARIÁS, 2018, p. 17).

Zechariah stresses that the right to human dignity is an absolute right. Articles 3 and 4 of the ECHR (European Convention on Human Rights) do not recognise any exceptions on the part of the
State, in which case it may be exempted from the prohibitions. Nor can Article 3 be derogated from in cases of emergency: "The ECHR establishes an absolute prohibition, without limitation, of torture and inhuman or degrading punishment or treatment, even in grave circumstances such as the fight against terrorism and organised crime (ZAKARIÁS, 2018).

B. The Right to The Integrity of the Body

The term 'bodily integrity' means 'freedom from intrusion into the material substance of the person', the physical and legal boundaries of the human body being considered equivalent to the physical and legal boundaries of nation states. Furthermore, the protection of the body from external interference, regardless of its effects or intentions, is an essential part of the right to physical integrity. Informed consent to medical procedures is based on this definition and on the individual autonomy and personal integrity of the patient. Doctors must "ensure that the patient is adequately informed, has the legal capacity to give consent and does so voluntarily (i.e. without coercion)" in order to obtain legitimate consent from their patients (Sapto HERMAWAN, 2022). Under international law, recognition of bodily integrity and autonomy is central to the maintenance of human dignity. The right to bodily integrity applies not only to routine therapeutic medical procedures, but also to medical corrections such as castration punishment. This means that sex offenders have a right to bodily integrity, which can be used as a legal justification for opposing castration as a punishment, especially when it is imposed as a mandatory sentence. Doctors or other health professionals cannot castrate sex offenders without their consent. The situation is different from voluntary castration as a condition of parole or early release, where sex offenders give their consent to be castrated, either chemically or surgically (Sapto HERMAWAN, 2022).

Respect for autonomy is about recognising others' capacity for self-determination and supporting those choices wherever possible. Respecting patient autonomy in the context of health care decision-making would not only mean allowing the patient to make the final decision to consent, but also encouraging the patient to seek the information necessary to make an informed decision or, where appropriate, to provide such information themselves (WONG, 2001).

The notion of respect for autonomy is complicated when applied to the criminal justice system, as this system operates by limiting autonomy. Some examples of these restrictions include imprisonment itself and, in some countries, legal requirements for sex offenders to enter public registers and live at a certain distance from schools or childcare centres (WONG, 2001).

Because of the potential harm to the public that sexual abuse can cause, it may be permissible to limit the autonomy of sex offenders by requiring chemical castration of certain offenders. Theoretically, this would not be unprecedented: there are currently a number of scenarios in which medical procedures or protocols are allowed in the name of public safety and/or health. Examples include the mandatory isolation of individuals with certain infectious diseases and the sentencing of drunk drivers to alcohol treatment programmes, or even the ordering of compulsory treatment for offenders with pathological mental states. These examples have two features in common with court-ordered chemical castration: all are medical
interventions, since they aim to treat or prevent the spread of a diagnosable disease, and all three apply regardless of the individual's state of incapacity. If we consider how these examples compare with the case of court-ordered chemical castration, we can determine whether chemical castration constitutes a particularly strong or inappropriate infringement of the offender's autonomy (Samantha VAIL LANCOURT, 2012; Elizabeth PITULA, 2010).

Subjective human dignity presupposes autonomy: the voluntary decision-making of the individual in the management of his or her own life. This implies freedom of choice. Borrowing from bioethics, the mechanism of informed consent, advocates of neurological interventions invoke the subject's voluntariness in cases where offenders are given the choice between pharmacological treatment and prolonged incarceration. If we dispense with the mandatory chemical or physical castration, this raises the question of the voluntariness of the subject who has to choose between two coercive alternatives. It raises the question whether free choice is viable in such coercive circumstances and sheds light on the inadequacy of informed consent in a legal context. By analogy, this would be like a doctor forcing a patient to take a preventive flu vaccine by threatening to give the patient the viral form of the infection. Obviously, in the case of compulsory neurosurgery or physical castration, even this pretext for voluntary decision making would be invalidated (Connie S. ROSATI, 1994; Mark D. KIELSGARD, 2019; Lene BOMANN-LARSEN, 2013).

The question of the violation of the right to bodily integrity as a fundamental right in the context of the chemical castration issue can be decided - on the basis of the above - only if we can establish whether there is a possibility of voluntary decision-making on the part of the potential subject when accepting the use of this procedure. If the answer is in the negative, it is clear that the right to integrity of the body is also violated, but if the answer is in the affirmative, then the individual, on the basis of his own voluntary decision, has his body and in this case there is no violation of this right.

C. The Right to Freedom of Thought

One argument in the debate over chemical castration is that chemical castration unduly interferes with a sex offender's freedom of expression and may be a subtle form of mind control. However, this argument ignores the well-established principle that none of our fundamental rights are absolute. In fact, chemical castration does not interfere with the normal functioning of the mind; it merely interferes with the paraphilic sex offender's obsession with compulsive sexual fantasies and returns his thought process to normal (CHISM, 2013). And if we are talking about the freedom of thought of the non-paraphilic sex offender, we cannot talk about any violation of it, since the drugs used in chemical castration do not affect the thoughts of a healthy individual in any way, no pharmacological drug can do that.

D. The Right to family, private life and procreation

The protection of human privacy and family life is also enshrined in most international documents, such as the Universal Declaration of Human Rights, Article 16 of which states that "men and women of full age have the right to marry and to found a family (...) without distinction of race, nationality or religion". The family is the natural and fundamental group unit of society and has the right to be protected by society and the State. Article 23 of the
International Covenant on Civil and Political Rights states: 'The right of men and women of full age to marry and to found a family shall be recognised'. Articles 8 and 12 of the European Convention on Human Rights protect the individual's private and family life, stating that "Everyone has the right to respect for his private and family life, his home and his correspondence (Articles 8 and 12 of the European Convention on Human Rights). Article 8)", and "Men and women of marriageable age have the right to marry and to found a family, in accordance with the national laws governing the exercise of this right (Article 12)". Embedded in the right to privacy are the right to reproduction, the right to refuse medical treatment and the right to treatment. Chemical castration, however, does not violate any of these rights, as it does not necessarily deprive the individual of his or her reproductive capacity.

Furthermore, although it is difficult, it is still possible to have erections and even ejaculation with the help of a partner after being treated with medication, and recent research suggests that this can be enhanced by medication that does not affect the effectiveness of chemical castration. If necessary, the dose can be adjusted to avoid complete impotence and to overcome adverse side effects. Even if the abuser is unable to do these things, he can freeze his sperm samples so that he can have children in the future. Just because abusers treated with antiandrogen drugs have low testosterone levels and a feeling of 'erotic apathy' does not mean that they no longer have the ability or potential to have children. Opponents of chemical castration, on the other hand, point out that injections of antiandrogen drugs, which can deform sperm and reduce sperm count, significantly reduce the possibility of producing offspring, and as a result, for some sex offenders, hormone therapy becomes a de facto ban on parenthood (Ratkoceri, 2020).

### E. Respect for Family and Private Life

Under Article 8 ECHR, the state must respect the private and family life, home and correspondence of the individual. Unlike Article 3, Article 8 is not an absolute right, but a qualified right. Article 8(2) states that the exercise of this right may be interfered with by a public authority only in such cases as are prescribed by law and are necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of public health or morals, or for the protection of the rights and freedoms of others. The State must justify the use of libidinal suppressants under this Article.

Although Article 8(1) lists family and private life as areas covered by the Article, it does not define these concepts. In the present context, respect for family life may extend to the coercive use of chemical castration as it would affect family relations. However, it is important that the private life of the perpetrator would also be affected. Privacy has been interpreted broadly by the court to include "the physical and psychological integrity of the individual", which must be respected in order to "ensure the unfolding of the individual's personality without external interference in his relations with other people". This broad basis of the right extends not only to physical integrity but also to moral integrity and sexual relations. The notion of dignity underpinning Article 3 is also reflected in Article 8 jurisprudence. The idea of protecting the person and developing relationships with others, as well as protecting moral

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integrity, is closely linked to a life lived with dignity. Some views hold that chemical castration interferes with family and private life by interfering with the offender’s capacity for personal development and by affecting his sexual relations with others. The ECtHR has reiterated that "... even a minor interference with the physical integrity of an individual must be regarded as an interference with the right to respect for private life under Article 8, if it is carried out against the will of the individual" (Karen HARRISON, 2009).

Assuming that a violation of the right set out in Article 8(1) can be established by forcing a person to undergo chemical castration - and it should be stressed that, again, this is only a case of compulsory chemical castration - even in that case, the relevant and debatable issue is Article 8(2), which requires the state to justify the use of chemical castration. Any treatment programme must be "in accordance with the law", which means that there must be some legal basis for the treatment. If a mandatory chemical castration program is implemented, legislation will be needed to authorize non-consensual medical treatment on a competent person. Such legislation should be accessible, predictable and its application should be foreseeable. Ideally, treatment should be regulated by legislation rather than a code of practice. There should also be legal safeguards that are accessible and regulated for the perpetrator. The state must demonstrate a legitimate purpose in implementing the programme. These include - relevant to the present issue - public safety, crime prevention, protection of the community and morals, and protection of the rights or freedoms of others, all of which may justify the use of libidinal suppressants.

Much of the ECHR case law on Article 8 examines the question of the necessity of such a measure in a democratic society. For a measure to be necessary, it must be proportionate: does it strike a 'fair balance' between the rights of an individual and the needs of society as a whole, or between the rights of two individuals? For chemical castration to be proportionate, the decision-maker must engage in a balancing exercise where the law must weigh the interests of the individual against the public interest, or the rights of another individual - the victim. In this balancing exercise, there is a clash between different forms of dignity: the dignity of the individual (the perpetrator) and the dignity of another individual (the victim), or the need to uphold the dignity of humanity as a collective by protecting an individual or society (Karen HARRISON, 2009).

Prior to the implementation of the Human Rights Act, a form of involuntary castration was justified in some national laws in cases where persons with mental or learning disabilities were forcibly sterilised. The courts have held that such an intervention can be justified if it is in the best interests of the patient, although, as noted above, these need not be limited to the best medical interests of the patient and may include medical, emotional and other welfare issues. It is unclear, and has not been considered by the courts, whether "other welfare issues" may include the protection of the public from sex offenders. Some of the perceived benefits of forced sterilisation, such as allowing patients to leave institutions, may also apply to paedophiles as they may prevent further imprisonment. If sexual suppressants were offered instead of prison, this could be considered the least intrusive measure. If the side-effects of the drugs are reversible and short-term, this would certainly be less intrusive for the offender than surgical castration or drugs such as MPA, which can have long-term effects similar to castration.

In addition, by placing emphasis on paedophile offenders, the court can place great weight on the public interest, as the potential victims of paedophiles are children. Like Article
Article 8 imposes positive obligations on States to ensure respect for the law. As a vulnerable group, they have a potential claim to protection from paedophiles in order to fulfil their right to protection under Article 8. The court’s decision on where to strike the balance may depend on the margin of appreciation it gives to states. This is the discretion that the ECtHR gives to states because “they are best placed to decide certain questions because of their direct and continuing connection with the vital forces of their country”. The extent of the discretion given to the State is influenced by various factors, including the nature of the law, the nature of the public interest and the absence of a European consensus on the issue. Some European countries apply chemical castration, with different legal regimes, so it would be difficult to speak of consensus. Taking this into account, and if the legitimate aim is crime prevention and public safety or public health, or merely the interest of the individual, the ECtHR gives the state a wide margin of appreciation. However, if the treatment causes negative side effects and these persist for a long period of time, the ECtHR may consider that the interference with the law is particularly invasive and thus the State must do more to demonstrate the necessity of the interference caused (Karen HARRISON, 2009).
2.6. The right to found a family

The right to marry and found a family under Article 12 does not include the restrictions contained in Article 8(2). It is, however, limited by reference to national legislation governing the exercise of the right. This right also includes the notion of human dignity, which includes the capacity to procreate.

As mentioned above, the effects of chemical castration include increased potency, orgasm, sperm production, increased frequency and enjoyment of masturbation, and reduced sexual frustration. While libidinal suppressants reduce sex drive, some men are still able to have full-fledged sexual intercourse and impregnate women. If this were true for all men, we would not even have to talk about a violation of the right in Article 12. However, anti-androgenic drugs cause impotence in some offenders and the loss of the ability to achieve an erection in some men. If this is irreversible, then interfering with the ability to have children is the same as forced abortion or sterilisation, and although national legislation can regulate citizens’ rights in this area - as it does, also without a European consensus - it cannot undermine their real substance. While it is argued that the right to life with dignity includes the right to procreation, some countries have interfered in cases of sterilisation of mentally disabled women.

A libido reduction cure is different, mainly because the effects must be reversible. In fact, according to research, if CPA is used for a limited period of time, it is likely that the offender will start a family after completing treatment. For sex offenders who need prolonged exposure to the drug, there is always the option of freezing sperm before starting treatment, similar to the process many cancer patients use before starting chemotherapy. The sperm could later be used for in vitro fertilisation (IVF) to have children. It should be noted that if an offender is in prison, his right to start a family is also restricted and this is already considered an acceptable practice. National legislation may allow convicted sex offenders to be temporarily deprived of the possibility of starting a family, provided that the duration of treatment and its side effects do not completely undermine the essence of the right. The proportionality of the use of drug therapy is important (Karen HARRISON, 2009).

2. Cruel and Unusual Punishment

The right to protection against abuse is an integral part of many important international conventions, global and regional agreements, and many state constitutions. Article 3 of the European Convention on Human Rights (ECHR) prohibits torture, stating that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Article 5 of the Universal Declaration of Human Rights of 1948 states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Eighth Amendment to the US Constitution also prohibits "cruel and unusual punishment". Article III(1) of the Fundamental Law of Hungary states that "No one shall be subjected to torture, inhuman or degrading treatment or punishment, or held in servitude". When it comes to determining whether a chemical castration is crude and unusual, authors usually argue that in this case we have to answer two questions. First, is chemical castration really punishment or treatment for the offender, and second, is chemical castration harsh and unusual? (Gajendra K. GOSWAMI, 2014; Karen HARRISON, 2008)
Are coercive neurocorrections a treatment or a punishment? The interpretation of neurocorrection drugs as punishment may be based on their involuntary nature. If people generally view neurocorrective treatment as an interference with the integrity of the individual, then coercive neurocorrective treatments may be seen as punishment, even if that is not their purpose. At the end of this train of thought, the answer that neurocorrections are both treatment and punishment may be appealing. This position is also related to the question of whether we should distinguish between mentally healthy and physically healthy criminals on the one hand, and mentally or physically ill criminals on the other? (DONGYUE Wei, 2022).

As for this debate and the test of whether chemical castration should be classified as treatment or punishment, it can be assessed initially by who has access to chemical castration (PITULA, 2010), and as we can see, the answer to this varies widely in different laws around the world. Some states such as the USA, England and Wales, Macedonia and others only offer chemical castration if the abuser is in the criminal justice system and is a convicted sex offender. Other states have structures and protocols in place that cover persons treated in mental health institutions (PITULA, 2010; Paul COSYNS, 1999). As for the answer to the question of whether chemical castration is "severe, inhumane and unusual", weekly intramuscular injections, despite the temporary discomfort they may cause during the injection, are generally not considered "unnecessary", "unusual" or "arbitrary". Chemical castration does not involve torture, as the abuser is simply subjected to chemical therapy, which is a less intrusive alternative as the perpetrator retains his or her physical integrity and the effects of the treatment can be reversed. Although some argue against the use of chemical castration against sexual abusers, chemical castration is not severe enough to be considered cruel and unusual punishment. When comparing castration to a lengthy prison sentence that subjects a convicted abuser to "threatened daily violence and sexual abuse," the possibility that chemical castration is a reasonable alternative cannot be denied (Ratkoceri, 2020; WONG, 2001).

In the United States, as in Poland and the Czech Republic - and all countries where chemical castration is currently used - the epidemic of sexual crimes and its impact on victims has led government officials to find new ways to combat sexual crimes. Advances in medical science have made the use of chemical castration a new "playground" for sex crime legislation. However, the mandatory use of chemical castration as a condition of parole or post-prison supervision for sex offenders has not escaped medical and legal criticism. Medical experts claim, based on research, that the drugs have been proven effective for only one type of offender: paraphilias. The overwhelming majority of researchers also argue that the drug is unlikely to have a meaningful effect on other types of sex offenders, particularly those motivated by anger, aggression or hostility. Some argue that for these offenders, chemical castration may have the opposite effect. Moreover, the mandatory rather than voluntary use of chemical castration has not been shown to be effective. It is the clear opinion of the scientific world that for maximum drug potential and treatment effect, the use of chemical castration should be limited to paraphilic sex offenders, should be voluntary rather than coerced, and should be combined with psychological or behavioural therapy for maximum treatment potential (WONG, 2001).

Proponents (advocates) of chemical castration claim that, unlike surgical castration, the injections used to administer chemical castration are minimally invasive and almost impossible to cause acute medical complications. Furthermore, if a more effective treatment were
developed, or any punishment for a sex offender were revised as a result of new evidence, hormone injections could be stopped and "castration" could be reversed without adverse effects. This alternative to non-mutilatory and non-violent imprisonment allows sex offenders to leave prison without the same sexual orientation that led to their incarceration (Ratkoceri, 2020).

3. Exemption From Torture, Inhuman or Degrading Treatment

Article 3 of the ECHR prohibits torture, inhuman or degrading punishment or treatment. This right has been interpreted by the ECtHR as imposing both negative and positive obligations on states. A State cannot be responsible for or take measures to prevent a person within its jurisdiction from being subjected to torture, inhuman or degrading treatment or punishment. The fundamental importance of this right is demonstrated by its absolute, non-derogable nature. Once an interference with the law has been established, the State cannot justify it. Article 3 directly addresses the idea of an attack on human dignity. However dangerous or despicable a person may be, this is irrelevant to the protection afforded by the Article. Article 3 contains the most fundamental values of a democratic society. The Court is well aware of the enormous difficulties that States face in modern times in protecting their communities from terrorist violence. Even in such circumstances, however, the Convention prohibits torture, inhuman or degrading treatment or punishment in absolute terms, regardless of the conduct of the victim.

The definition of informed consent includes the patient’s agreement to the therapeutic treatment based on all available facts about the medical administration; the consent must not be influenced by any other external influence; and the consent of the patient is required for the therapeutic intervention. There are, however, exceptions to the informed consent provision that allow medical intervention to be carried out without the patient's consent: infants, young people under 18 and persons who are still in a situation where they must be cared for by others; patients who are mentally ill, cataleptic or have a disorder; community health policies; disclosure of private information to health authorities; and those under duress or restraint (Samantha VAILLANCOURT, 2012; Sapto HERMAWAN, 2022).

Paraphiliated persons have the right to have their dignity protected under Article 3, regardless of the offence for which they have been convicted. The subjective concept of dignity refers to the human worth of each individual. Violation of this right undermines the dignity of all (Danaher, 2013).

Does the use of chemical castration constitute torture, inhuman or degrading treatment? If consensual treatment is used, then the government has a positive duty to ensure that perpetrators give informed consent, for example by providing guidance on what information should be given to the perpetrator about the treatment. As mentioned above, various Council of Europe bodies have stressed the importance of procedures to ensure free consent. The offender may argue that the consent was not "genuine" consent because the State did not fulfil its obligation to ensure that the decision was an informed one or that it was linked to the punishment. In contrast to the US Constitution, the ECHR covers both punishment and treatment, and case law treats the concepts interchangeably without defining each. However, the purpose of medication must be clear. Under Article 3, the state may punish those
who have committed a crime, and it cannot be doubted that most punishments may involve some suffering. However, the court stressed that punishment must not go beyond what is lawful and must be "compatible with respect for human dignity" (Karen HARRISON, 2009; Lando KIRCHAMIR, 2019).

4. Informed, Voluntary Consent

If sex offenders receive pharmacological treatment on a voluntary basis, such acceptance must be valid and the offender must have the capacity to make such decisions. If full information is available about the treatment to which the offender is undergoing and accepting, there should be no reason for law, and in particular human rights law, to interfere. Opponents of chemical castration, however, point out that voluntary consent implies free choice, which they argue is not possible if the only alternative to treatment is the complete denial of freedom (Ratkoceri, 2020).

The validity of consent implies an understanding of the nature and effects of the treatment and the freedom not to be forced to make decisions that you would not otherwise have made. Consent must be free and informed. In the case of chemical castration, offenders should be told what drugs they are taking, how long they should take them, and should be given exhaustive information about the expected benefits and adverse side effects.

The Council of Europe has stressed the importance of free and informed consent in intervention programmes as part of Community sanctions or measures. Any Community sanctions or measures must comply with international human rights standards. In order to ensure the effectiveness of such measures, the offender should be clearly informed, involved in the decision-making process and should consent before the Community sanction or measure is taken prior to trial or as an alternative to trial or other sanction. The Council of Europe has developed guidelines for the treatment of sex offenders in prison. The offender has the right to refuse treatment and must be aware of the possible consequences for his or her release, and must be informed of the positive and negative consequences of treatment. In 2007, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse stressed that offenders who receive intervention must consent to the procedures in full knowledge of the facts (Karen HARRISON, 2009).

The Council of Europe documents do not define chemical castration as a treatment, but "intervention programmes" is a general term for programmes designed to prevent re-offending. These could potentially include drug therapy. The issue of consent has also been raised in ECtHR case law. Although in some areas, the Court has recognised the right of the state to frustrate consent, in relation to medical treatment and detention it has made clear that free and informed consent is an important element in the protection of personal integrity and liberty (HARRISON, 2008).

Despite the important role of informed consent in biomedical ethics, there are a number of public health cases in which non-consensual medical interventions in the broad public interest are (broadly construed). For example, it seems plausible to suggest that it is permissible to violate the rights of individuals to free movement and association in order to prevent the spread of infectious diseases. A proponent of compulsory chemical castration might argue that if certain non-consensual medical interventions are permissible to prevent threats to public health, why not perform non-consensual interventions to prevent threats to public safety,
society and children? Particularly when the perpetrators of violent sex crimes pose a culpable threat to the latter, this threat to them does not exist (Pugh, 2015).

Furthermore, the concept of proportionality must be taken into account when imposing penalties. Classically, proportionality means that the harm caused by the punishment should not be greater than the harm caused by the offender to other people. This principle is not yet in the UN's toolbox, but it is included in the Charter of Fundamental Rights of the European Union, Article 49(3) of which states that "the severity of penalties must not be disproportionate to the offence". Another ethical concern relates to the availability of treatment: the question of whether pharmacotherapy, or medication, should be available to all those who need it or who request it, or only to those convicted of a sexual offence (CDPC, 2012; HARRISON, 2008).

Several studies and papers raise the question of the actual existence of genuinely voluntary and uncoerced consent. Some critics argue that the choice between chemical castration and further, longer prison sentences is "inherently coercive" and violates the requirement of informed consent. In the absence of informed consent, medical intervention should not be used against offenders, so chemical castration cannot be a substitute for imprisonment. On this basis, even if the decision is apparently taken voluntarily by the offender, it cannot be accepted because it is coerced. Many authors argue that by forcing this consent decision, this type of procedure attacks and takes away the autonomy of the offender.

In response, some of those who advocate chemical castration argue that the legislator gives the offender greater autonomy, since if he did not have this choice, he would face only imprisonment, which would really limit his autonomy. Whereas in this way, being given an option, he is free to consider his options in the knowledge that he is properly informed. Still another view is that although the choice may pressure the perpetrator to consent to chemical castration, this does not necessarily mean invalid consent because the choice is still "voluntary".

Even if de facto voluntary consent to chemical castration cannot be obtained, the implementation of chemical castration does not imply a deprivation of individual autonomy. According to the rational interpretation of autonomy, the desire of sex offenders is in fact an obstacle to individual autonomy, because desire based on false beliefs and without consideration of harmful consequences is irrational and limits people's autonomy. If the implementation of chemical castration can weaken these desires, it can also increase autonomy to some extent. Therefore, formal consent is sufficient to respect the autonomy of criminals, and there is no need to apply a higher standard of "actual consent" (DONGYUE Wei, 2022).

According to Samantha Vaillancourt, informed consent is "the individual's autonomous authorisation for a medical intervention". Informed consent is valid if five criteria are met: 1.) the person is competent, i.e. the capacity to make a decision is present; 2.) information, i.e. relevant information provided by the informant to the decision-maker; 3.) understanding, i.e. the decision-maker has understood the information; 4.) Voluntariness, i.e. the absolute absence of external influences on the decision-making process; 5.) and consent, i.e. the decision-maker's agreement to participate in the process. In the therapeutic context of chemical castration, an autonomous paraphilic offender who retains decision-making capacity may give or withhold informed consent to treatment.
The problem may arise if the information does not contain the information necessary to encourage autonomous decision-making based on informed consent. If these offenders were to request castration outside the court-ordered framework, they would certainly want to receive more information than simply what side effects they can expect from the treatment. For example, the offender would want to know how long such a treatment lasts, how long it may take for the sex drive to diminish, and whether the drug administered interacts with other drugs the offender is taking. Thus, in order for such information to be considered sufficient, there needs to be a legal provision requiring information to be provided in all necessary detail, including how to ascertain the offender’s true understanding (VAILLANCOURT, 2012).

The lasting effects of childhood sexual victimisation vary from individual to individual, but research suggests that children who have been sexually abused show negative emotional effects soon after the onset of abuse, with symptoms of depression, anxiety, fear, guilt, shame, withdrawal, low self-esteem, behaviour in school or social situations, sleep disturbances and eating disorders. Furthermore, children who have been sexually abused show recurrent emotional and psychological damage later in adulthood, often with more severe consequences. Adults who have been sexually abused as children are more likely to abuse substances and alcohol, and to engage in suicidal behaviour. Child victims often continue the cycle of sexual abuse as adults by marrying an abusive partner or even abusing their own children. It is not surprising that some of the most common injuries suffered by adults who were sexually victimised as children are sex-related. Some studies suggest that children who have been sexually abused may experience sexual dysfunction in adulthood, including promiscuity or difficulty maintaining healthy sexual relationships (CHISM, 2013).

5. Conclusion

Childhood sexual abuse may have consequences for adult psychopathology. Victims of rape are more likely to suffer from anxiety, depression and post-traumatic stress disorder. One third of sexual assault victims are at risk of suicide and 20% of victims attempt suicide. The stress of sexual assault weakens the immune system, increasing the chance of getting sick, and can also lead to self-harm behaviours such as drug use, eating problems, increasing sexual activity with multiple partners, which can increase the severity of the illness, or emotional problems can manifest themselves in physical symptoms. A second common problem caused by sexual assault is the development of a variety of sexual dysfunctions, including avoidance, loss of interest, loss of pleasure, painful intercourse and fear. Victims of these crimes experience extreme trauma that can have chronic consequences. Victims' families and friends are also affected by sexual violence and, in addition to the pain suffered by victims, the psychological and physical difficulties resulting from the assault place a heavy burden on the health care system (PITULA, 2010).

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